

STATE OF WISCONSIN Division of Hearings and Appeals

In the Matter of

DECISION

PRELIMINARY RECITALS

Pursuant to a petition filed January 02, 2014, under Wis. Stat. §49.45(5), and Wis. Admin. Code §HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability now known as the Office of Inspector General (OIG) in regard to Medical Assistance (MA), a hearing was held on February 13, 2014, at Waukesha, Wisconsin.

The issue for determination is whether the OIG authorized appropriate PCW hours.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services 1 West Wilson Street, Room 651 Madison, Wisconsin 53703

By: Kelly Townsend

Division of Health Care Access and Accountability 1 West Wilson Street, Room 272

P.O. Box 309

Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Waukesha County.

- 2. Petitioner is 15 years old and diagnosed with Rett Syndrome. She requires assistance with activities of daily living (ADLs).
- 4. The OIG granted the maximum daily time for bathing, dressing, grooming, eating assistance, AFO and splint cares, incontinence cares, mobility, and transfers. No time was given for range of motion exercises, g-tube site care, complex positioning, "medical conditions", or seizures. There were no physician orders for range of motion, g-tube site care, complex positioning originally submitted with this PA. 24 hours of PRN per year were also granted for times of acute need.

5.

DISCUSSION

MA coverage of PCW services is described in the Wis. Adm. Code, §DHS 107.112. Covered services are specified in subsection (1), and are defined generally as "medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community." Examples of covered services are assistance with bathing, with getting in and out of bed, with mobility and ambulating, with dressing and undressing, and meal preparation. In determining the number of PCW hours to authorize the OIG uses that standard along with the general medical necessity standard found at Wis. Adm. Code, §DHS 101.03(96m). It provides:

"Medically necessary" means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
- 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
- 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
- 3. Is appropriate with regard to generally accepted standards of medical practice;
- 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
- 5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
- 6. Is not duplicative with respect to other services being provided to the recipient;
- 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
- 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
- 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code, §DHS 101.03(96m).

To determine the number of PCW hours to authorize the OIG uses the Personal Care Screening Tool, a computer program it believes will allow it to consistently determine the number of hours required by each recipient. The screening tool allots a specific amount of time in each area the recipient requires help,

which the OIG's reviewer can then adjust to account for variables missing from the screening tool's calculations.

At hearing, the petitioner's mother testified regarding the denial of the range of motion exercises, g-tube site care, and complex positioning. The OIG denied the time for the range of motion exercises, g-tube site care, and complex positioning because there were no doctor's orders for them provided along with the PA. The petitioner's mother provided a letter from the doctor dated February 14, 2014 which refers to petitioner's need for the range of motion exercises, g-tube site care, and complex positioning. The problem with petitioner's case is that this information was not provided when the PA was requested. When prior authorization is requested, it is the provider's responsibility to justify the need for the service. Wis. Adm. Code, §DHS 107.02(3)(d)6 (emphasis added). There is no question that the rules require doctor's orders to verify that the PCW services are so authorized. One such rule specifically states that PCW services "shall be provided upon written orders of a physician." See Wis. Adm. Code §DHS 107.112(1)(a); see also Wis. Adm. Code, §DHS 107.02(2m)(a)19. The terms and conditions under which providers of health care services are certified for participation in the MA program also require that the RN supervisor secure written orders from the client's physician. See Wis. Adm. Code §DHS 105.17(2)(b)2. Without the proper orders, the MA program cannot authorize hours for those cares. This relates to the fact that PCW services must be performed according to a written plan of care for the recipient and developed by a registered nurse for purposes of providing necessary and appropriate services. See Wis. Adm. Code §DHS 107.112(3)(b). The plan of care must be based on the registered nurse's visit to the recipient's home and an evaluation of the recipient's condition and record, and a discussion with the physician as to any necessary changes in the plan of care. Id.

In reviewing the original information submitted by the provider, I can see how the OIG was unable to determine that all of the requested PCW services were medically necessary. The reviews of information submitted during and after the hearing in the matter still do not meet these Code requirements. A new PA can be submitted to support the 2/14/14 doctor's orders, but it must be submitted along with an accurate and thorough plan of care. I suggest that the petitioner, her provider(s), and the medical specialists she sees review her PCW needs and that they provide the documentation to support a new request for PCW time.

I therefore must conclude that the OIG was correct in its modification of the PA. As in all prior authorization request cases, the petitioner bears the burden of proving the services she requests are necessary, and that has not been done. As stated above, the provider may be able to file another prior authorization request correcting the problems and explaining more fully the need for the hours. This is not intended to diminish the challenges petitioner and her family face, but rather to explain that the documentation must be there to support the requested services.

Petitioner should note that the state MA law, Wis. Admin. Code, §DHS 104.01(12)(c) provides:

When a service must be authorized by the department in order to be covered, the recipient may not be held liable by the certified provider unless the prior authorization was denied by the department and the recipient was informed of the recipient's personal liability before provision of the service. In that case the recipient may request a fair hearing. Negligence on the part of the certified provider in the prior authorization process shall not result in recipient liability.

Finally, I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The OIG authorized appropriate PCW hours for the petitioner based on the information submitted with the PA request.

THEREFORE, it is

ORDERED

That the petition for review herein is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400. The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee, Wisconsin, this 18th day of March, 2014

\sKelly Cochrane Administrative Law Judge Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 18, 2014.

Division of Health Care Access and Accountability